

## FACT SHEET

# **Americans with Disabilities Act - Title I relating to employment and drugs and alcohol use** (Public Law 101-336)

### **What does the ADA say with respect to drug and alcohol use?**

The ADA specifically permits employers to ensure that the workplace is free from the illegal use of drugs and the use alcohol, and to comply with other Federal laws and regulations regarding alcohol and drug use. At the same time, the ADA provides limited protection from discrimination for recovering drug addicts and for alcoholics.

An individual who is currently engaging in the illegal use of drugs is not an "individual with a disability" when the employer acts on the basis of such use.

An employer may prohibit the illegal use of drugs and the use of alcohol in the workplace.

It is not a violation of the ADA for a employer to give tests for the illegal use of drugs.

An employer may discharge or deny employment to persons who currently engage in the illegal use of drugs.

An employer may not discriminate against a drug addict who is not currently using drugs and who has been rehabilitated, because of a history of drug addiction.

A person who is an alcoholic is an "individual with a disability" under the ADA.

An employer may discipline, discharge or deny employment to an alcoholic whose use of alcohol impairs job performance or conduct to the extent that she/he is not a "qualified individual with a disability."

Employees who use drugs or alcohol may be required to meet the same standards of performance and conduct that are set for other employees.

Employees may be required to follow the Drug-Free Workplace Act of 1988 and rules set by Federal agencies pertaining to drug and alcohol use in the workplace.

### **What does the "illegal" and "current" use of drugs mean?**

The illegal use of drugs includes the use, possession, or distribution of drugs which are unlawful under the Controlled Substances Act. It includes the use of illegal drugs and the illegal use of prescription drugs that are "controlled substances."

The illegal use of drugs does not include drugs taken under supervision of a licensed health care professional, including experimental drugs for people with AIDS, epilepsy, or mental illness.

An individual who illegally uses drugs but also has a disability, such as epilepsy, is only protected by the ADA from discrimination on the basis of the disability (epilepsy). An employer can discharge or deny employment to such an individual on the basis of his/her illegal use of drugs.

If an individual tests positive on a test for the illegal use of drugs, the individual will be considered a current drug user under the ADA where the test correctly indicates that the individual is engaging in the illegal use of a controlled substance.

"Current" drug use means that the illegal use of drugs occurred recently enough to justify an employer's reasonable belief that involvement with drugs is an on-going problem. It is not limited to the day of use, or recent weeks or days, in terms of an employment action. It is determined on a case-by-case basis.

### **What does the law say about "current" use of alcohol?**

While a current illegal user of drugs has no protection under the ADA if the employer acts on the basis of such use, a person who currently uses alcohol is not automatically denied protection simply because of the alcohol use. An alcoholic is a person with a disability under the ADA and may be entitled to consideration of accommodation, if the person is qualified to perform the essential functions of a job. However, an employer may discipline, discharge or deny employment to an alcoholic whose use of alcohol adversely affects job performance or conduct to the extent that the person is not "qualified."

### **Does ADA protect "recovering" drug addicts or people "regarded as" addicts?**

Persons addicted to drugs, but who are no longer using drugs illegally and are receiving treatment for drug addiction or who have been rehabilitated successfully, are protected by the ADA from discrimination on the basis of past drug addiction.

However, a person who casually used drugs illegally in the past, but did not become addicted is not an individual with a disability based on the past drug use. In order for a person to be "substantially limited" because of drug use, the person must be addicted to the drug.

Individuals who are not illegally using drugs, but who are erroneously perceived as being addicts and as currently using drugs illegally, are protected by the ADA. As with other disabilities, an individual who claims that discrimination occurred because of past or perceived illegal drug addiction, may be asked to prove that the individual has a record of, or is regarded as having, an addiction to drugs.

### **What does ADA permit employers to do to prohibit drug and alcohol use in the workplace?**

The ADA does not prevent efforts to combat the use of drugs and alcohol in the workplace. The ADA does not interfere with employers' programs to combat the use of drugs and alcohol in the workplace. The Act specifically provides that an employer may

- prohibit the use of drugs and alcohol in the workplace,

- require that employees not be under the influence of alcohol or drugs in the workplace, and
- require that employees who illegally use drugs or alcohol meet the same qualification and performance standards applied to other employees.

Unsatisfactory behavior such as absenteeism, tardiness, poor job performance, or accidents caused by alcohol or illegal drug use need not be accepted nor accommodated.

While the ADA permits an employer to discipline or discharge an employee for illegal use of drugs or where alcoholism results in poor performance or misconduct, the Act does not require this. However, the ADA does not require an employer to provide an opportunity for rehabilitation in place of discipline or discharge to such employees. The ADA may, however, require consideration of reasonable accommodation for a drug addict who is rehabilitated and not using drugs or an alcoholic who remains a "qualified individual with a disability."

An employer can fire or refuse to hire a person with a past history of illegal drug use, even if the person no longer uses drugs, in specific occupations, such as law enforcement, when an employer can show that this policy is job-related and consistent with business necessity. However, even in this case, exclusion of a person with a history of illegal use might not be justified automatically as a business necessity, if an applicant with such a history could demonstrate an extensive period of successful performance as a police officer since the time of drug use.

An employer also may fire or refuse to hire an individual with a history of alcoholism or illegal drug use if it can demonstrate that the individual poses a "direct threat" to health or safety because of the high probability that the person would return to the illegal drug use or alcohol abuse. The employer must be able to demonstrate that such use would result in a high probability of substantial harm to the individual or others which could not be reduced or eliminated with a reasonable accommodation. An employer cannot prove a "high probability" of substantial harm simply by referring to statistics indicating the likelihood that addicts or alcoholics in general have a specific probability of suffering a relapse. A showing of "significant risk of substantial harm" must be based upon an assessment of the particular individual's history of substance abuse and the specific nature of the job to be performed.

An employer may make certain pre-employment, pre-offer inquiries regarding use of alcohol or the illegal use of drugs. An employer may ask whether an applicant drinks alcohol or whether he or she is currently using drugs illegally. However, an employer may not ask whether an applicant is a drug addict or alcoholic, nor inquire whether the applicant has ever been in a drug or alcohol rehabilitation program.

After a conditional offer of employment, an employer may ask any questions concerning past or present drug or alcohol use. However, the employer may not use such information to exclude an individual with a disability, on the basis of a disability, unless it can show that the reason for exclusion is job-related and consistent with business necessity, and that legitimate job criteria cannot be met with a reasonable accommodation.

### **How does ADA affect drug testing?**

An employer may conduct tests to detect illegal use of drugs. The ADA does not prohibit, require or encourage drug tests. Drug tests are not considered medical examinations, and an applicant can be required to take a drug test before a conditional offer of employment has been made. An employee also can be required to take a drug test, whether or not such a test is job-related and necessary for the business. (On the other hand, a test to determine an individual's blood alcohol level would be a "medical examination" and only could be required by an employer in conformity with the ADA.)

An employer may refuse to hire an applicant or discharge or discipline an employee based upon a test result that indicates the illegal use of drugs. The employer may take these actions even if an applicant or employee claims that the person recently stopped illegally using drugs.

Employers may comply with applicable Federal, state, or local laws regulating when and how drug tests may be used, what drug tests may be used, and confidentiality. Drug tests must be conducted to detect illegal use of drugs. However, tests for illegal use of drugs also may reveal the presence of lawfully-used drugs. If a person is excluded from a job because the employer erroneously "regarded" the person to be an addict currently using drugs illegally when a drug test revealed the presence of a lawfully prescribed drug, the employer would be liable under the ADA. To avoid such potential liability, the employer would have to determine whether the individual was using a legally prescribed drug. Because the employer may not ask what prescription drugs an individual is taking before making a conditional job offer, one way to avoid liability is to conduct drug tests after making an offer, even though such tests may be given at anytime under the ADA. Since applicants who test positive for illegal drugs are not covered by the ADA, an employer can withdraw an offer of employment on the basis of illegal drug use.

If the results of a drug test indicate the presence of a lawfully prescribed drug, such information must be kept confidential, in the same way as any medical record. If the results reveal information about a disability in addition to information about drug use, the disability-related information is to be treated as a confidential medical record.

*The above information was excerpted and summarized from the EEOC Technical Assistance Manual on Title I of the ADA, published January 26, 1992.*

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